IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.157 OF 2004

Indian Express Newspapers (Bombay) Ltd. ..Petitioner.
Vs.
Jyestha Communications Pvt. Ltd. ..Respondent.

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Mr. Vinayak Shete i/b Poorvi Kamani for the Petitioner.
Mr. P. G. Lad for the Respondent.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

21st June, 2007.

P.C. :

1. The Company Petition for winding up has been instituted on the foundation that the bills raised by the Petitioner upon the Respondent for the publication of advertisements in the Indian Express Group of newspapers have remained to be paid. The Respondent issued release orders between January and May 2002 for the publication of advertisements, copies of which are annexed at Exhibits B-1 to B-25. Corresponding thereto are the invoices raised by the Petitioner which are at Exhibits C-1 to C-25. The Petitioner had moved the Indian Newspaper Society to which the

Respondent was accredited. The society informed the Petitioner on 18th February, 2003 that the accreditation of the Respondent was in the process of being cancelled. In response to a communication addressed by the Petitioner, the Respondent stated that according to it the actual outstanding due after adjusting for a bulk business discount was Rs.11,30,759/-. The defence, however, was that Bombay Bazar who was a client of the Respondent had refused to pay the amount because of the publication of certain articles in the Indian Express. The Respondent offered to settle the dues between 10 to 20% of the outstandings. In a subsequent communication dated 4th February, 2003 the Respondent offered an amount of Rs.5 lacs. The Petitioner addressed a statutory notice under Sections 433 and 434 of the Companies Act, 1956 to which there was no reply.

2. Three defences were raised in the reply. The first was that the client of the Respondent refused to make payment of the dues because of the publication of certain articles in the Indian Express newspapers. The defence is only to be stated to be

rejected. There is absolutely no dispute about the fact that the Petitioner did publish the advertisements upon the release orders issued by the Respondent. The Respondent is clearly liable to pay the dues. There is similarly no merit in the second contention that the Indian Newspaper Society had to be impleaded as a party to the Petition for winding up. Such a third party is neither a necessary nor a proper party to these proceedings. The third submission which is to the effect that the Petitioner has received an amount of Rs.22,919/- from the Indian Newspaper Society is again without merit because the claim of the Petitioner is to the extent of Rs.14,50,368/- exclusive of interest.

3. In the circumstances, it is evident that the Respondent is unable to pay its debts. An order of winding up would have to be passed. The Company Petition is accordingly made absolute in terms of prayer clauses (a) and (b).